

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

HENRY FORD WYANDOTTE HOSPITAL

Employer

and

Case 07-RC-273376

MICHIGAN ASSOCIATION OF POLICE (MAP)

Petitioner

DECISION AND DIRECTION OF ELECTION

On a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), a hearing was conducted before a hearing officer of the National Labor Relations Board (Board) on the sole issue of whether, in light of the continuing COVID-19 pandemic, the Region should conduct an election for a unit of guards employed by the Employer at its facility in Wyandotte, Michigan, by manual or mail ballot. There are approximately 21 employees in the stipulated unit.¹

The Employer operates a 360-bed acute care hospital and wellness center in Wyandotte, Michigan and argues it is possible to conduct a manual election safely on the premises. Petitioner is amenable to a manual election if the Employer meets certain safeguards but finds mail balloting is an appropriate alternative to a manual election where, as here, the positivity rates for COVID-19 are increasing both locally and state-wide.

Although election details, including the type of election to be held, are nonlitigable matters left to my discretion,² the parties were permitted to present their positions,³ as well as

¹ At the hearing the parties stipulated that the following is an appropriate unit for collective bargaining:

Included: All full-time and regular part-time armed and unarmed security guards performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Employer at its facility located at 2333 Biddle Avenue, Wyandotte, Michigan.

Excluded: Confidential employees, temporary and casual employees, and supervisors as defined in the Act and all other employees who are not performing guard duties under the Act.

² Sec. 102.66(g)(1) of the Board's Rules and Regulations. See also, Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (December 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

³ Pursuant to Sec. 102.66(d) of the Board's Rules and Regulations, the Employer was required to file and serve on the Petitioner its statement of position by 12:00 noon on March 11; however, it did not file or serve Petitioner until March 12, nor did it request an extension of time to file or serve its statement of position. I instructed the hearing officer to receive the statement of position as evidence establishing it was untimely, and then precluded the Employer from litigating any litigable issues. See *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13 (January 9, 2017) (adopting Regional Director's decision to reject employer's statement of position and preclude litigation of issues raised therein based solely on the untimely service); *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (August 25, 2016) (overturning Regional Director's decision to accept statement of position served 3 hours 20 minutes late and allow union to litigate issues raised therein); see also, *Twin City Foods, Inc.*, 19-RC-265696

witnesses and documentary evidence,⁴ and file post-hearing briefs⁵ regarding the mechanics of this election. I have carefully considered the record, including those positions and arguments, and for the reasons discussed below, I find that a prompt mail-ballot election is appropriate in this case given the extraordinary circumstances presented by the continuing COVID-19 pandemic.

I. POSITIONS OF THE PARTIES

The Employer contends that the current state of the COVID-19 pandemic does not constitute the extraordinary circumstances required for the Regional Director to direct a mail-ballot election. The Employer notes there are three COVID-19 vaccines approved for use in the United States and highlights that 1354 of the approximately 2357 employees at its Wyandotte facility have received the necessary doses of approved vaccinations. Specifically, 22 of the 26 individuals in the Security Department, along with its potential observers for a manual election, have been vaccinated.

Furthermore, the Employer argues that it has robust testing and tracking procedures to limit the impact of any positive cases within the facility. The Employer tests employees when they report having been exposed to the coronavirus that causes COVID-19 or are having symptoms of COVID-19. In the two weeks before the hearing, March 3 to 17, 2021,⁶ the Employer tested 1265 of its Wyandotte facility employees for COVID-19; 1016 tested negative and 241 tested positive (6 positive results were from March 11 to 17). As of the day of the pre-election hearing, March 19, the Employer reported zero employees were awaiting COVID-19 test results, one employee was off work due to exposure to COVID-19, three employees tested negative but were off work due to other illness, and 12 were off of work because of a positive COVID-19 test.⁷ Of the approximately 26 security personnel in the petitioned-for unit,⁸ 15 have been tested for COVID-19 since March 3, 2020, with 12 receiving negative results and three testing positive. The most recent positive test in the Security Department was January 6.

The Employer proposes holding the election in a gym in the Allen building, which houses some of the Employer's administrative offices and its outpatient rehabilitation. The Allen building connects to the hospital via a corridor but both buildings have separate rooftop

(January 19, 2021)(unpublished) (denying review of Regional Director's decision to preclude employer's litigation of issues raised in statement of position untimely served 1 hour 19 minutes late on union).

⁴ As the method of election is a nonlitigable issue, I exercised my discretion under Sec. 102.66(b) of the Board's Rules and Regulations and instructed the hearing officer to take evidence, including witness testimony, from the Employer regarding the COVID-19 pandemic and the situations set forth in *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020).

⁵ Sec. 102.66(h) provides parties with the right to file post-hearing briefs with the Regional Director.

⁶ All dates are in 2021 unless otherwise indicated.

⁷ The record does not indicate how many employees were off work due to COVID-19 symptoms but were not awaiting a test or had not received test results.

⁸ The record reveals some turnover in the stipulated unit but is unclear as to how many total individuals have been employed in the Security Department since March 3, 2020.

ventilation systems. The gym has been closed since the start of the pandemic, March 2020. The Employer commits to abiding by the measures set forth in GC Memo 20-10⁹ and indicates it will clean the proposed polling place with liquid and ultraviolet disinfectants the day before a manual election.

Petitioner desires an election as soon as practicable but notes the increasing test positivity rate in Wayne County, where the Employer's facility is located. While it maintains a mail-ballot election is an appropriate alternative given the current state of the COVID-19 pandemic, Petitioner believes a manual election can be conducted in the gymnasium proposed by the Employer provided the Employer abides by GC Memo 20-10, particularly plexiglass barriers and sufficient individual writing utensils for each voter.

The Employer and Petitioner agree a manual election should consist of two polling sessions, 7:30 a.m. to 8:30 a.m. and 2:30 p.m. to 4:30 p.m., on a Thursday.

II. METHOD OF ELECTION

On November 9, 2020, the Board issued its decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), reiterating its longstanding preference for manual elections under *San Diego Gas & Electric*, 325 NLRB 1143 (1998), while also providing more specific and defined parameters under which Regional Directors should exercise their discretion in determining the method of election against the backdrop of COVID-19. The Board set forth "six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic," noting that "[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election" under the extraordinary circumstances presented by the COVID-19 pandemic. *Aspirus*, above, slip op. at 1. Those six situations are:

- 1) The Agency office tasked with conducting the election is operating under "mandatory telework" status;
- 2) Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
- 3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
- 4) The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;
- 5) There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
- 6) Other similarly compelling considerations.

As discussed below, the 14-day testing positivity rate in Wayne County, where the Employer's facility is located, is higher than 5%, which, by itself, warrants a mail-ballot election.

⁹ "Suggested Manual Election Protocols," General Counsel Memorandum 20-10 (July 6, 2020). See also, "Guidance on Propriety of Mail Ballot Elections, pursuant to *Aspirus Keweenaw*," General Counsel Memorandum 21-01 (November 10, 2020) ("Aside from elements set forth in GC Memo 20-10, upon which the *Aspirus Keweenaw* Board relies in part, the instructions set forth in this memorandum supersede all other instructions on the subject").

This finding is further supported by the a possible COVID-19 outbreak at the Employer’s facility, a 14-day increasing trend in COVID-19 positivity rates when using the most complete and relevant data, and other similarly compelling considerations.

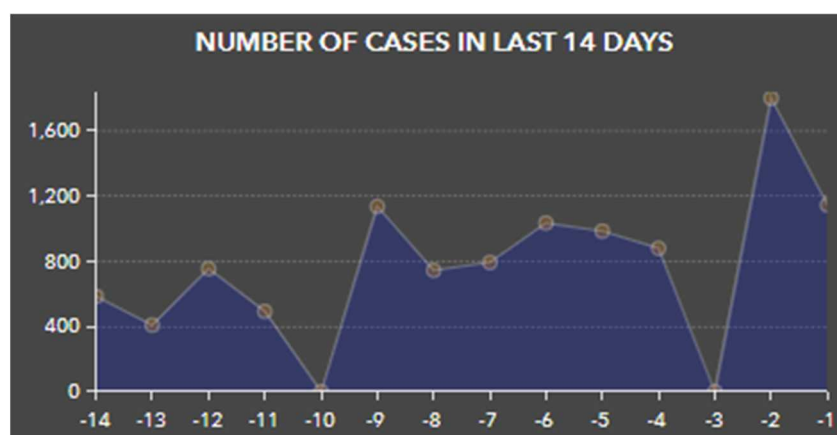
Analysis of Facts Related to the Six Situations

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status

As the Board in *Aspirus* acknowledged, all regional offices (including subregional and resident offices) have been on permissive, rather than mandatory, telework since mid-June 2020. Id., slip op. at 5.

2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher

The *Aspirus* Board did not specifically detail how the 14-day trend in the number of new cases should be evaluated, but it did direct that “the 14-day period should be measured from the date of the Regional Director’s determination, or as close to that date as available data allow”¹⁰ and that county-level data for the potential polling place should be accessed through the “Coronavirus Resource Center” website maintained by Johns Hopkins University. Id., slip op. at 5, fn. 20 & 22. The City of Wyandotte, where the Employer’s facility is located, is in Wayne County, Michigan. As of March 31, the Johns Hopkins site for Wayne County showed the following 14-day trend:¹¹



¹⁰ Despite the Board’s clear instructions, the Employer argues that it would be “suspicious” for me to look at the most recently publicly reported data on confirmed cases of COVID-19 and testing positivity rate. I find no merit in this contention. See, *Detrex, Inc.*, 08-RC-08-RC-269611, fn.1 (March 17, 2021) (unpublished) (finding no merit to the Employer’s contention that the Regional Director delayed issuance of the decision until the positivity rates would require a mail-ballot election, particularly given the extant positivity rates in the relevant area.)

¹¹ “COVID-19 Status Report” (updated March 31). Johns Hopkins University. <https://bao.arcgis.com/covid-19/jhu/county/26163.html> (accessed March 31).

Wayne County itself reports COVID-19 data, which excludes the City of Detroit.¹² The chart below shows the number of confirmed COVID-19 cases for Wayne County reported by Johns Hopkins, which includes the City of Detroit, and by Wayne County, which excludes the City of Detroit.¹³

Date	Johns Hopkins including Detroit	Wayne County excluding Detroit
March 17	585	426
March 18	409	348
March 19	755	384
March 20	493	340
March 21	0	no data
March 22	1137	692
March 23	745	565
March 24	793	456
March 25	1035	697
March 26	985	625
March 27	880	577
March 28	0	187
March 29	1801	879
March 30	1146	694

The Johns Hopkins data indicate the 14-day trend in the number of new confirmed cases has fluctuated from 585 on March 17 to 1146 on March 30, with a daily high 1801 on March 29 while the Wayne County data (which the Employer suggests is more accurate for excluding Detroit) shows a clearer increasing trend, particularly when removing currently incomplete data from the past three days.¹⁴

Regarding the 14-day positivity rate, Johns Hopkins explains the standard cited in *Aspirus* thus: “On May 12, 2020 the World Health Organization (WHO) advised governments that before reopening, rates of positivity in testing (i.e., out of all tests conducted, how many came back positive for COVID-19) should remain at 5% or lower *for at least 14 days*” (emphasis added).¹⁵ In other words, the WHO standard is not an average, and a locality with a testing positivity rate over 5% in any one of the preceding 14 days normally warrants a mail-ballot election. However, even assuming that an average was the intended metric, the 14-day *average* positivity rate remains impermissibly high, as detailed below.

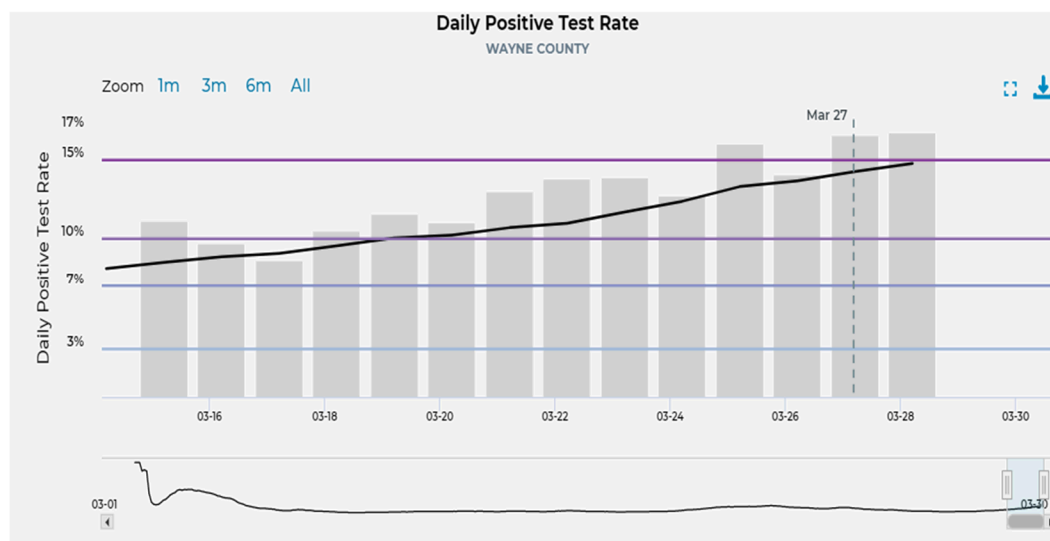
¹² The Employer argues that because a majority of Wayne County’s population resides in the City of Detroit, the county positivity rate has less of an impact on this petition, although it does not explain how.

¹³ “COVID-19 Activity in Wayne County Dashboard” (updated March 30). Wayne County, Michigan. <https://www.waynecounty.com/covid19dashboard/> (accessed March 31)

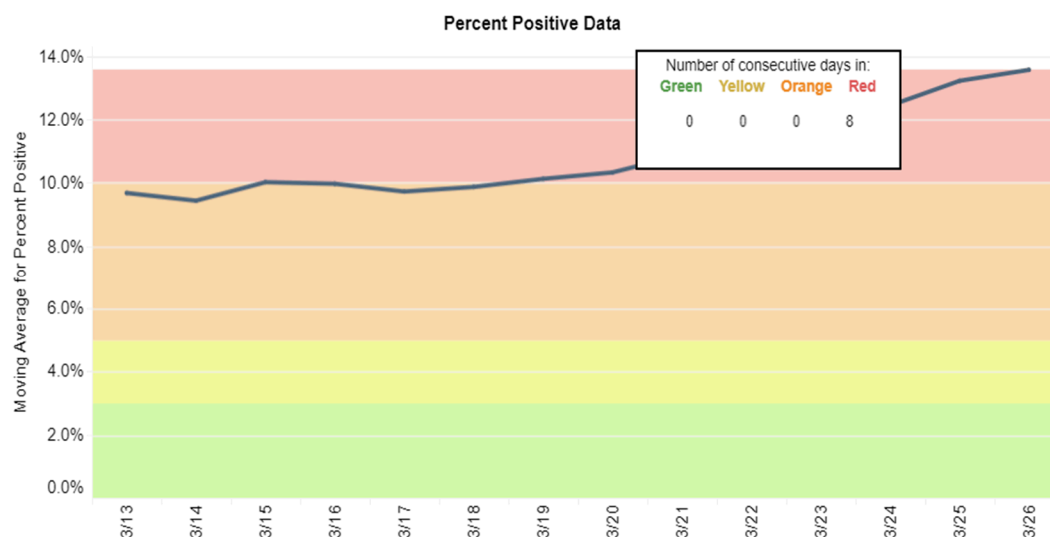
¹⁴ Other MDHHS data, such as the daily positive test rate, is reported on a 3- to 4-day delay. See below.

¹⁵ “Which U.S. States Meet WHO Recommended Testing Criteria?” <https://coronavirus.jhu.edu/testing/testing-positivity> (accessed March 31).

As part of the MI Safe Start plan, the Michigan Department of Health and Human Services (“MDHHS”) reports data related to the COVID-19 pandemic, including the daily positive test rate at the county level. As of March 31, the Wayne County testing positivity rate for the most recent 14-day period reported, March 15 to 28, exceeded 8% every day with an increasing trend. The testing positivity rate for Wayne County on March 28 was over 16%.¹⁶



The data from MDHSS also shows the 14-day testing positivity rate for Wayne County, excluding Detroit, shows a similar trend for the most recent and complete data, March 13 to 26.¹⁷



¹⁶ “MI Safe Start Map” (Wayne County showing risk levels and indicators as of March 30). <https://www.mistartmap.info/?area=county%3Awayne> (accessed March 31).

¹⁷ “Covid Wayne County Cases Dashboard” (data for March 23). Dearborn Public Schools. <http://dearbornschools.org/services/covid-wayne-county-cases-dashboard/> (accessed March 31). The dashboard uses MDHSS data and the Johns Hopkins definition of “percent positive” is a collaboration between The Metro Bureau, Dearborn Public Schools, Bloomfield Hills School District, and Munetrix.

I find the testing positivity rate in Wayne County is more than double the 5% WHO standard set by the Board in *Aspirus* and supports holding a mail ballot election.

3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size

On March 19, MDHHS Director Elizabeth Hertel issued an emergency order regarding gatherings and face masks. Effective March 22 to April 19, “Indoor gatherings are prohibited at non-residential venues, except where no more than 25 persons are gathered.”¹⁸ As such, the proposed manual election site does not appear to violate any health orders relating to maximum gathering size.

4. The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols

At hearing and in its brief, the Employer committed to abide by the protocols in GC Memo 20-10.

5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status

The Employer states that there is not an outbreak at its facility because none of the six employees who tested positive from March 10 to 17 were determined to be linked.¹⁹ However, the Employer did not disclose whether any of the more than 200 other employees who tested positive the week prior were linked, nor did it update the number of confirmed cases among employees in its post-hearing brief. As such, the record evidence is inconclusive as to whether the number of cases in the facility could be linked or would otherwise constitute an outbreak according to CDC standards. As noted below in the following section, this could be particularly

¹⁸ “Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order” (March 19). MDHHS. https://www.michigan.gov/documents/coronavirus/FINAL_Masks_and_Gatherings_order_-_3-19-21_7am_719890_7.pdf (accessed March 31).

¹⁹ The CDC explains:

Definitions for COVID-19 outbreaks are relative to the local context. A working definition of “outbreak” is recommended for planning investigations. A recommended definition is a situation that is consistent with either of two sets of criteria:

During (and because of) a case investigation and contact tracing, two or more contacts are identified as having active COVID-19, regardless of their assigned priority.

OR

Two or more patients with COVID-19 are discovered to be linked, and the linkage is established outside of a case investigation and contact tracing (e.g., two patients who received a diagnosis of COVID-19 are found to work in the same office, and only one or neither of the them was listed as a contact to the other).

“Managing Investigations During an Outbreak” (updated July 31, 2020). CDC. <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/outbreaks.html> (accessed March 31).

concerning given the existence of variants of the virus that are spreading throughout the State of Michigan.

6. Other similarly compelling considerations

The Board specifically explained the above situations “are not exclusive or exhaustive” and recognized there may be “other similarly compelling considerations” not specifically enumerated in *Aspirus* that may warrant mail balloting. Id., slip op. at 7. I find it appropriate to consider recent changes in the pandemic, specifically variants of the original coronavirus (SARS-CoV-2) that causes the COVID-19 disease. While the Employer argues the current level of vaccination mitigates the extraordinary circumstances of COVID-19, the United States Centers for Disease Control and Prevention (CDC) has identified five “variants of concern” that cause more severe disease, spread more easily between humans, require different treatments, and/or alter the effectiveness of vaccines—B.1.1.7 (UK), B.1.351 (South Africa), P.1 (Brazil), B.1.427 and B.1.429 (also known as CAL.20C or California).²⁰ The March 19 emergency order issued by MDHHS Director Hertel states:²¹

[The B.1.1.7] variant is roughly 50 to 70 percent more infectious than the more common strain....Michigan is second in the nation with respect to the number of B.1.1.7 variants detected. To date, there are over 600 cases in Michigan....And on March 8, 2021, the first case of variant B.1.351 was detected in Michigan....A recent study suggests that B.1.351 may impair vaccine efficacy.

As of March 28, the CDC reported 1237 cases of the B.1.1.7 variant in Michigan and five cases of the B.1.351 variant.²² The Employer does not track whether employees have tested positive for one of the variants.

In addition to the existence of these variants within the State of Michigan and the increase in case positivity over the preceding several weeks, I must be mindful of the safety of the other participants in a manual election; notably the representatives of the Employer, the Petitioner and the Board Agent. While the record evidence establishes that Employer representatives and both observers have been vaccinated, there is no evidence regarding the vaccination status of the union representative or Board Agent. Furthermore, there is no evidence as to whether any of the non-employee participants may be inadvertently exposed to a more-contagious variant or are at increased risk of serious illness.

As such, I find that the uncertainty of added risks with the recently emerging variants, which were not yet identified in the United States at the time of the Board’s decision in *Aspirus*, and the lack of specific information on non-employee participants who would be involved in a

²⁰ “SARS-CoV-2 Variant Classifications and Definitions” (updated March 24). CDC. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/variant-surveillance/variant-info.html> (accessed March 31). The CDC is also monitoring and evaluating an additional three “variants of interest.”

²¹ “Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order” (March 19), above.

²² See, for example, “COVID-19 Cases Caused by Variants” (updated March 30). CDC. <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html> (accessed March 31).

manual election constitute compelling considerations that further weighs in favor of a mail-ballot election.

III. CONCLUSION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Based on the record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it would effectuate the purposes of the Act to assert jurisdiction herein.²³
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. There is no collective-bargaining agreement in effect covering any of the individuals in the petitioned-for unit and, therefore, no contract exists barring consideration of the instant petition.
6. The parties have stipulated, and I find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time armed and unarmed security guards performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Employer at its facility located at 2333 Biddle Avenue, Wyandotte, Michigan.

Excluded: Confidential employees, temporary and casual employees, and supervisors as defined in the Act and all other employees who are not performing guard duties under the Act.

²³ The parties stipulated that Henry Ford Wyandotte Hospital, a Michigan corporation, operates an acute care hospital located at 2333 Biddle Avenue, Wyandotte, Michigan. During the year ending December 31, 2020, the Employer, in conducting its operations, derived gross revenues in excess of \$250,000 and purchased and received at its Wyandotte, Michigan facility goods valued in excess of \$5,000 directly from points located outside the State of Michigan.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Michigan Association of Police (MAP)**.

A. Election Details

I direct that the election be conducted by mail ballot for the reasons set forth above.

The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit by personnel of the National Labor Relations Board, Region 7, on **Wednesday, April 14, 2021, at 4:15 p.m.** Voters must sign the outside of the envelope in which the ballot is returned. **Any ballot received in an envelope that is not signed will be automatically void.**

Those employees who believe that they are eligible to vote by mail and do not receive a ballot in the mail by **Friday, April 23, 2021**, should communicate immediately with the National Labor Relations Board by calling Board Agent Matthew Ritzman at (313) 335-8069, or Office Manager Karen Roock at (313) 335-8063, the Region 7 Office at (313) 226-3200 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters should return their mail ballots so that they will be received in the National Labor Relations Board, Region 7 Regional Office by the close of business, 4:45 p.m. (EDT) on **Wednesday, May 12, 2021**. All ballots will be commingled and counted at 1:00 p.m. (EDT) on **Wednesday, May 19, 2021**. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots. The method for the count will be determined by the Regional Director and will require video participation.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **March 27, 2021**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are: 1) employees who have quit or been discharged for cause since the designated payroll period; 2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **April 2, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The list must also be served electronically on the other parties named in this decision.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays,

Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Although neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board, all ballots will be impounded where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: March 31, 2021



Terry Morgan, Regional Director
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